

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES

v.

INDICTMENT NO. 04 10299 PBS – 11

HOWARD GREENBERG

DEFENDANT’S REVISED MOTION TO DISMISS INDICTMENT¹

Howard Greenberg (“the Defendant”), in the above-numbered Indictment and through Counsel, moves this Court to dismiss Count One of the Indictment, the sole Count in which he has been charged.

As his reason therefore, the Defendant says that the evidence against him in this matter – whether in the condition in which it was proffered to a Grand Jury or in such condition as it now stands for use at trial – is insufficient to properly include the Defendant in the conspiracy count charged.

In so moving the Defendant asks this Court to exercise its general supervisory power to administer its docket and preserve the integrity of the judicial process. This Court has the authority to “formulate procedural rules not specifically required by the Constitution or by Congress.” United States v. Hasting, 461 U.S. 499, 505 (1983); see also United States v. Lee, 906 F.2d 117, 119 (4th Cir. 1990) (*per curiam*).

The Court is asked, therefore, to dismiss Count One of the Indictment as against the Defendant .

¹ This Revised Motion is filed in place of the Defendant’s Original Motion to Dismiss Indictment. The original Motion set forth as its first of two grounds an argument that the Government could not establish more than a “buyer/seller” relationship between the Defendant and a single member of the conspiracy, where the Defendant purchased scheduled substances for his own use. The Motion was filed at a time when the Defendant believed that the discovery was complete. In light of subsequent discovery the Defendant withdraw such issue. He does press, however, the remaining ground.

The Court is referred to the accompanying Revised Memorandum for further particulars and argument.

/s/ Roger Witkin

ROGER WITKIN

6 Beacon Street, Suite 1010

Boston, Massachusetts 02108

Tel. 617 523 0027

Fax 617 523 2024

BBO No. 531780

DATED: April 21, 2006

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HOWARD GREENBERG

CERTIFICATE OF SERVICE

I, Roger Witkin, Counsel to the Accused in the above-numbered Indictment, certify that I have served the within *Defendant's Revised Motion to Dismiss Indictment* and *Revised Memorandum in Support of the Defendant's Revised Motion to Dismiss Indictment* upon

AUSA Neil J. Gallagher, Jr.
United States Attorney's Office
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210, and

Robert Alba, Courtroom Clerk
For Honorable Patti B. Saris
United States District Court
One Courthouse Way, Suite 2300
Boston, Massachusetts 02210,

by electronic filing this 21st day of April 2006.

/s/ Roger Witkin
ROGER WITKIN
6 Beacon Street, Suite 1010
Boston, Massachusetts 02108
Tel. 617 523 0027
Fax 617 523 2024
BBO No. 531780

DATE: April 21, 2006

